



City of Seattle

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Gregory J. Nickels, Mayor  
**Department of Design, Construction and Land Use**  
D. M. Sugimura, Acting Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
OF THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

**Application Number:** 2100483  
**Applicant Name:** John Rutland, Cramer Northwest Inc.  
**Address of Proposal:** 8045 45<sup>th</sup> Ave NE

**SUMMARY OF PROPOSED ACTION**

Master Use Permit to subdivide one parcel into two parcels of land in an environmentally critical area. The existing house and carport will remain on proposed Parcel A. Proposed parcel sizes are: Parcel A: 5,378 square feet and Parcel B: 9,622 square feet.

The following approvals are required:

Short Subdivision - To divide one lot into two parcels (SMC Chapter 23.24).

SEPA - Environmental Critical Area (Chapter 25.09.240 SMC) –Short subdivisions in  
Environmentally Critical Areas, Steep Slopes

**SEPA DETERMINATION:**      ☐ Exempt   ☒ DNS   ☐ MDNS   ☐ EIS  
  
   ☐ DNS with conditions  
  
   ☐ DNS involving non-exempt grading or demolition or  
   involving another agency with jurisdiction

\* Early Notice DNS published February 15, 2001.

## **BACKGROUND DATA**

### Site Description:

The subject property is located in Northeast Seattle on the west side of 45<sup>th</sup> Avenue NE, north of NE 80<sup>th</sup> Street. The site is rectangular with the long axis of the property extending east to west from the street frontage on 45<sup>th</sup> Avenue NE within 25 ft of the wooded ravine/right of way for undeveloped 44<sup>th</sup> Avenue NE to the west. The property is currently developed with a single family structure and attached carport fronting on 45<sup>th</sup> Avenue NE.

45<sup>th</sup> Avenue NE is an improved right-of way. There are no sidewalks or curbs along either side of the street north of NE 80<sup>th</sup> Street.

### Zoning:

Single Family 5000 (SF 5000)

### Parcel Size:

15,005 square feet total. Approximately 2,960 sq. ft. of steep slope, riparian corridor buffer, wetland, and wetland buffer exist on the westernmost portion of the site – this does not include the area of steep slope buffer.

### Existing Use:

The subject property is currently developed (on proposed Parcel A) with a one-story single-family residence and an attached carport, both of which are to remain. Proposed Parcel B of the site contains an identified environmentally critical area as defined in SMC 25.09.180: Steep Slopes. Approximately 2,400 SF of proposed Parcel B, approximately thirty (30) percent of the 9,622 SF lot area, is steep slope. This site is also located within a riparian corridor, and a wetland has been identified on the site (see “Additional Information” below).

### Surrounding Uses:

North: Single family residence SF 5000  
East: Single family residence SF 5000  
South: Single family residence SF 5000  
West: Undeveloped 44<sup>th</sup> Avenue NE right of way that is a steep wooded ravine. Across the ravine are single family residences in a SF 5000 zone.

### Proposal Description

Master Use Permit to subdivide one parcel into two parcels of land in an environmentally critical

area. Future construction activities, when proposed, will be reviewed under a separate Master Use Permit. The existing house and garage are to remain. The proposed parcel sizes are approximately: Parcel A: 5,378 square feet and Parcel B: 9,622 square feet.

Vehicular and pedestrian access to Parcel B will be provided via a driveway that is part of a recorded joint access easement between the subject property and the parcel to the north. The majority of the driveway is on the neighboring north parcel with approximately 4.5 feet of the mutual easement on the subject property. In addition, the northerly adjacent property has an exclusive easement over the subject property. The subject property has an easement over a small area of the southwest corner of the northerly adjacent property for purposes of storm sewer construction, maintenance and repair.

### Public Comments

The comment period for this proposal ended March 7, 2001. Eight (8) comments were received during this period. The issues raised in the comment letters concerned the appropriateness of using the ingress and egress access easement between the subject property and the property to the north for access to the proposed parcel (2 letters, including 1 from the neighboring parcel to the north that holds part of this easement), the need to protect and preserve the ravine / 44<sup>th</sup> Avenue NE right of way as a greenbelt / riparian corridor (5 letters) and concern that subdividing this parcel and others in the area will lead to overcrowding in the neighborhood.

### Additional Information

**DCLU published a notice of decision, a conditional approval of the application, on November 21, 2002. The decision was appealed to the Hearing Examiner by neighbors, citing impacts associated with a riparian corridor and wetland. DCLU was not aware that there was a wetland on the subject property, and as a result of this new information, withdrew the decision on December 12, 2002. Subsequently, DCLU required the applicant to provide a wetland report in order to determine whether there are additional considerations or criteria to be reevaluated. This report is, therefore, revised in order to take into account the effect of the wetland and riparian corridor buffer on the short plat application analysis.**

### **ANALYSIS - SHORT SUBDIVISION**

Pursuant to SMC 23.24.40, no short plat shall be approved unless all of the following conditions are found to exist. The findings which follow are based on information provided by the applicant, referral comments from DCLU, Seattle Public Utilities, Seattle Fire Department, Seattle City Light, and review of the proposal by the Land Use Planner.

1. *Conformance to the applicable Land Use Policies and Land Use Code provisions;*

2. *Adequacy of access for vehicles, utilities and fire protection, as provided in Section 23.53.005;*
3. *Adequacy of drainage, water supply, and sanitary sewage disposal;*
4. *Whether the public use and interests are served by permitting the proposed division of land;*
5. *Conformance to the applicable provisions of SMC Section 25.09.240, short subdivision and subdivisions in environmentally critical areas;*
6. *Whether the proposal is designed to maximize the retention of existing trees;*
7. *Conformance to the provisions of Section 23.24.045, Unit Lot Subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses, cottage housing, clustered housing, or single-family housing.*

Based on information provided by the applicant, referral comments from DCLU, Seattle Public Utilities, Seattle Fire Department, Seattle City Light, and review of the proposal by the Land Use Planner, the following findings are made with respect to the above cited criteria:

1. Conformance with Land Use Policies and Code Provisions

The site is located within the Single Family 5000 zone (SF 5000). The maximum density within this zone is one dwelling unit per 5,000 square feet.

This proposal will divide the subject parcel into two lots as follows:

- Parcel A: 6,525 square feet
- Parcel B: 8,479 square feet

The resulting lot areas are over 5,000 square feet for each of the proposed lots.

Therefore, the parcels created by the proposed subdivision of land satisfy the minimum lot area requirement of the underlying zone.

The subdivision of this lot allows the existing single family residence and attached make this single family residence nonconforming. Proposed Parcel B contains an area of steep slopes greater than forty- (40) percent grade. This area is approximately 3,000SF in area. Combined with the fifteen (15) foot setback from the top of the slope and the existing access easement along the north property boundary. There is also a wetland on the western property line; the required 50 foot buffer falls almost completely within the extent of the non-disturbance area of the steep slope buffer. The remaining buildable area of proposed Parcel B is approximately 5,016 SF, providing adequate area on which to construct a single family dwelling consistent with the requirements of the Code.

Therefore, the proposal meets all applicable requirements of the Land Use Code and Policies.

2. Adequacy of Access for Vehicles, Utilities and Fire Protection

DCLU has circulated this proposed Short Subdivision to all city agencies with jurisdiction for review of utilities, access, and fire protection. All utilities are presently extended to proposed Parcel A and any changes in services would require approval of the respective utility.

Parcel A has frontage on 45<sup>th</sup> Avenue NE. Proposed Parcel B has access to 45<sup>th</sup> Avenue NE through an easement along an existing access driveway along the common property boundary between proposed Parcels A and B and the property to the north.

Seattle City Light provides electrical service to the proposed lots. If an easement for service to the property is required, the applicant must include the entire easement on the final subdivision.

The Fire Department review of access for fire and emergency vehicles indicated that there is adequate access. However, they advise that it is possible to site a house on the property that does not meet the requirements of the Seattle Fire Code and Administrative Rulings which would result in a requirement to install a sprinkler and/or alarm system. The Fire Department does not object to the proposal, but suggests that the applicant (for a building permit) should contact the Captain of Engineering for the Seattle Fire Department for further information.

Therefore, the proposed subdivision provides adequate access for vehicles, utilities, and fire protection.

3. Adequacy of Drainage, Water Supply, and Sanitary Sewage Disposal

This area is served with public storm drainage, domestic water, and sanitary sewer by the City of Seattle.

Drainage review indicates that there is adequate drainage and sanitary sewage disposal available. Depending on the method of storm water drainage to be used, an easement across the adjoining property may be necessary for access to the storm drain in the 44<sup>th</sup> Avenue NE right of way.

Water Availability Certificate 01-0134 from Seattle Public Utilities indicates that there is adequate availability of water supply.

Therefore, the proposed subdivision provides adequate provisions for drainage, water supply, and sanitary sewer disposal subject to the provisions of necessary easements as noted above.

4. Service of the Public Use and Interests

The purpose of the Single Family Policies is to preserve and maintain the physical character of Single Family Residential Areas in a way that encourages rehabilitation and provides housing opportunities throughout the city. The proposed short subdivision is consistent with the Single Family Policies, will meet all applicable Land Use Code provisions, has adequate access for vehicles, utilities and fire protection, and has adequate drainage, water supply and sanitary sewage disposal.

Therefore, the public use and interests are served by permitting the proposed subdivision of land while also maintaining the character of the neighborhood.

5. Conformance with Provisions for Environmentally Critical Areas

This site is located in an identified environmentally critical area as defined in SMC 25.09.180, Steep Slopes. Approximately, the western third (1/3) of proposed Parcel B is a steep slope of greater than forty (40) percent, and in a riparian corridor buffer, and or wetland and wetland/buffer.

Dale Snyder, Certified Professional Soil Scientist identified approximately 200 square feet of a forested wetland at the toe of the slope along the western property line. A larger portion of this wetland is located off-site. The ECA Ordinance (SMC 23.09.160.B) requires the wetland be protected with a 50-foot buffer. No development is allowed within this buffer, and all vegetation is to remain undisturbed.

Short subdivisions in Environmentally Critical Areas must meet the requirements of SMC 25.09.240, Short Subdivisions and Subdivisions in Environmentally Critical Areas. This short subdivision satisfies the requirements of subsections A through E of SMC 25.09.240 where applicable. This short subdivision will create two (2) lots. Proposed Parcel A has a single-family residence that will remain; there will be no new development on this lot. Proposed Parcel B will have a building site and access to that site that is outside the ECA and its required buffer, is configured to preserve the identified Environmentally Critical Areas and their buffers and does not create any easements involved in calculating minimum lot areas.

The following are required: Pursuant to smc 25.09.240.A, the final short plat must include a covenant that restricts development to the areas specified on the approved site plan. The covenant will require the placement of small permanent visible markers to delineate the location of the non-disturbance area, to be placed prior to recording of the short subdivision. These markers shall include reinforcing steel or metal pipe driven securely into the ground. The reinforcing steel or pipe shall have a brass cap affixed to the top similar to survey monuments (see page 3 of Director's Rule 3-94 for further information). Further, 25.09.060.C.1, General Development Standards, states that no

removal of vegetation shall be permitted within the protected steep slope and its buffer either during or after construction, except as otherwise permitted by the ECA Ordinance.

Grading and construction of any future structures will be reviewed during the building permitting stage and will be examined for conformance with all applicable requirements of the Land Use Code and Policies pertaining to Environmentally Critical Areas and is reviewed in the following SEPA analysis.

6. Tree Retention Criterion

Proposed Parcel B has a cluster of four (4) Red Cedar trees in the range of six (6) to ten (10) caliper inches each on or near the south property boundary, a large Maple in the likely center of any future building footprint and numerous trees in the steep slope Environmentally Critical Area. Because of their location along the perimeter of the property boundary, this cluster of Cedars could be retained with proper and thoughtful siting of any new structure on this proposed parcel. Given the constraints imposed by the environmentally critical areas non-disturbance areas (approximately 4,125 sq.ft.) and the location of the existing house on proposed Parcel A, it is not possible to configure this short plat to preserve the Maple tree. The trees in the steep slope must be protected pursuant to SMC 25.09.060, discussed in Criterion 5 above. Given the constraints of the location of the existing structure and the prohibition of building in the steep slope and associated fifteen-(15) foot buffer, this short plat is configured to maximize the retention of existing trees.

Additionally, SMC 23.44.008 (I) requires either tree preservation or replacement when single-family dwelling units are constructed. Whichever option is chosen, a Tree Preservation/Planting Plan shall be required prior to the issuance of any building permit for a single family dwelling unit on proposed Parcel B. The plan shall conform to all applicable tree preservation and planting provisions of the Land Use Code.

In order to retain the maximum number of trees on the site it is appropriate to require the retention of all trees on Parcel B until such time as a building permit is issued for a building on Parcel B. Further, notification of applicable Code provisions regarding trees shall be made to future owners of Parcel B.

7. Conformance to the provisions of Section 23.24.045, Townhouse Unit Subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses.

This short plat does not involve a unit subdivision, therefore these provisions are not applicable.

Summary - Short Subdivision

The lots to be created by this Short Plat, as conditioned, will meet all standards of the Single Family 5000 zone set forth in the Land Use Code, and are consistent with applicable Single Family policy guidelines. This short subdivision can be provided with vehicular access, and public and private utilities and access for emergency vehicles. Adequate provisions for water supply, drainage control, and sanitary sewage disposal have been provided for each parcel and service is assured, subject to standard conditions governing utility extensions. Prior to issuance of building permits for Parcel A provision shall be made to conform with the tree requirement of the Code which require either the preservation of existing trees or the planting of new trees. Therefore, the short subdivision meets all applicable provisions of Section 23.24.040 for Short Plats.

### **DECISION - SHORT SUBDIVISION**

The proposed Short Subdivision is **CONDITIONALLY GRANTED.**

### **SEPA ENVIRONMENTAL ANALYSIS**

The proposal site is located in an environmentally critical area which includes steep slopes, wetland and riparian corridor on the site, thus the application is not exempt from SEPA review. However, SMC 25.05.908 provides that the scope of environmental review of projects within critical areas shall be limited to : 1) documenting whether the proposal is consistent with the City's Environmentally Critical Areas (ECA) regulations in SMC 25.09; and 2) Evaluating potentially significant impacts on the critical area resources not adequately addressed in the ECA regulations. This review includes identifying additional mitigation measures needed to protect the eca in order to achieve consistency with SEPA and other applicable environmental laws.

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the Environmental Checklist dated October 2, 2000, which was submitted by the applicant and annotated by the reviewer. The information provided in the Environmental Checklist, the plans submitted by the applicant, and the experience of the lead agency with the review of similar projects are the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665(D)) states, "*Where City regulations have been adopted to address environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*" subject to some limitations. Under such limitations, mitigations may be considered.

### **Short-term Construction Related Impacts**



The short-term, eca related earth impacts anticipated from the proposal are summarized below:

### Earth

Pursuant to City Code, development in steep slope and other environmentally critical areas requires that all buffer and environmentally critical areas shall be protected during construction (SMC 25.09.060.C). Specifically, all buffer and protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and no removal of vegetation shall be permitted within the environmentally critical areas and the regulated buffers either during or after construction.

Construction plans, when submitted, will be reviewed by the DCLU Geotechnical Engineer and Building Plans Examiner who will require any additional soils-related information and recommendations as necessary to show conformance with the ECA Ordinance and Director's Rules 3-93 and 3-94 prior to issuance of the Master Use Permit. Therefore, no further conditioning for grading and construction activities is warranted pursuant to SEPA policies provided compliance with the above mentioned codes, ordinances and Directors Rules.

### Long Term Impacts

Long term or use-related impacts are anticipated as a result of the proposal. The anticipated long-term impacts include: 1) Water and 2) Plants.

These impacts are not considered significant. Several adopted City codes and/or ordinances provide mitigation for the identified impacts. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of these long-term impacts and no further conditioning is warranted by SEPA policies.

### Water

The western border of Proposed Parcel B contains steep slopes that descend into a riparian corridor that is the undeveloped right of way corridor for 44<sup>th</sup> Avenue NE, and a delineated wetland at the western property line. Improper dispersal of surface water run-off could adversely effect these critical area. To address these concerns, the ECA Ordinance and the Stormwater, Grading and Drainage Control Code provide for extensive review and conditioning of the project prior to issuance of building permits. Therefore, no further conditioning for stormwater impacts is warranted pursuant to SEPA policies.

### Plants

SMC 25.09.060.C.1, Short Subdivisions in Environmentally Critical Areas, General Development Regulations, states that no removal of vegetation shall be permitted within the protected critical areas and associated either during or after construction. Prior to issuance of any future construction permit(s), the proposal will be required to be consistent with all applicable provisions of the Land Use Code relating to tree preservation and/or replacement.

(See Criterion 6 under the Short Plat analysis above.) No additional conditioning is warranted pursuant to SEPA policies.

### **DECISION - SEPA**

This decision is made after review by the responsible official on behalf of the lead agency, in addition to a completed environmental checklist and other information on file with DCLU. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2)(c).
- [ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

### **CONDITIONS – SEPA**

None required.

### **CONDITIONS - SHORT SUBDIVISION**

The owner(s) and/or responsible party(s) shall:

#### **Prior to Recording**

1. Pursuant to subsections A of SMC 25.09.240, the final short plat must include a covenant that restricts development to the areas outside of the steep slope and buffer areas specified on the approved site plan. The covenant shall be on a form provided to the applicant by DCLU.
2. Identify the location of three (3) future permanent steep slope buffer markers to delineate the required environmentally critical areas and associated buffer(s) non disturbance area as indicated on the approved plat map . These markers shall be installed prior to recording the short subdivision. (See Director’s Rule 3-94, page 3 “Permanent Markers Delineating ECA Buffer Areas”).
3. Have final recording documents prepared by or under the supervision of a Washington State licensed land surveyor. Each lot, parcel, or tract created by the short subdivision shall be surveyed in accordance with appropriate State statutes. The property corners set

shall be identified on the plat and encroachments such as side yard easements, fences or structures shall be shown. Lot areas shall be shown on the plat. All existing structures, principal and accessory, shall be shown on the face of the plat and their distances to the proposed property lines dimensioned.

4. Include the easement from City Light (Exhibit A) on the final plat or submit documentation to the DCLU project file that an easement is not required.
5. Note on the face of the plat that "all trees shall remain on Parcel B until such time as future construction on the lot is approved subject to the provisions of SMC 23.44.008 that sets forth tree preservation and/or replacement requirements".
6. Submit the final recording forms for approval and any necessary fees.
7. Submit a joint use and maintenance agreement for the mutual access easement.

Prior to issuance of any Building Permit

8. Attach a copy of the recorded short plat and to the construction plans.

Prior to Final inspection for construction on Parcel B

9. A street address sign shall be placed at the street.

Signature: \_\_\_\_\_ (signature on file) Date: February 17, 2003  
Richard M. Sepler, AICP, Contract Land Use Planner  
Department of Design, Construction and Land Use  
Land Use Division

RMS:vw